



Appeal of Daniel, Jr., and Donna Bayles

The issue presented in this appeal is whether appellants have adequate support for deducting a \$49,351 small business worthless stock loss for the year 1979.

Appellants made an investment in Skateboard City Corporation, which began operation as a skateboard park in San Diego in October of 1977. The skateboard park never achieved any success, and in September of 1978 it ceased operations. Consistent with this cessation of activities, **Skateboard** City Corporation, on both its California and federal income tax returns for the fiscal year ended January 31, 1979, wrote off all its assets and took an abandonment and retirement loss of \$66,269. Appellant, Daniel Bayles, was president of Skateboard City Corporation and signed the California return.

Respondent found that the corporation abandoned its sole facility in September of 1978 and that it was without assets at that time. The worthless stock deduction was denied by respondent on the ground that the loss occurred in 1978 when the assets were abandoned.

Appellant contends that the stock did not become worthless until 1979 when the park was allegedly destroyed by vandals. Appellant further contends that it was not until 1979 that they reached an accord with the landlord of the real property on which the skateboard park was located releasing appellant from further obligation on their abandonment of the property.

Revenue and Taxation Code sections 18206 through 18210 provide that an individual may, in the year when the loss is sustained, treat a loss on small business stock as a loss from the sale or exchange of an asset which is not a capital asset. Such a loss is treated as an ordinary loss and is deductible only in the year when sustained. (Appeal of Lucille F. Athearn, Cal. St. Bd. of Equal., May 8, 1973.)

In order to qualify for the deduction, the loss must be evidenced by closed and completed transactions, and fixed by identifiable events. (United States v. White Dental Mfg. Co., 274 U.S. 398 [71 L.Ed. 1120] (1927).) **The burden is** on the taxpayer to establish that the securities became totally worthless during the year for which the deduction is claimed. (Mahler v. Commissioner, 119 F.2d 869 (2d Cir. 1941).) **Stock will not be considered** as worthless so long as there is reasonable hope and expectation that it will become valuable at some future time. (Appeal of Lambert-California Corporation,

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Cal. St. Bd. of Equal., Dec. 9, 1980.) In order to establish that hope and expectation is foreclosed, it is necessary for the taxpayer to show the occurrence of an identifiable event or events during the year which have destroyed the value of the stock. (See Sterling Morton, 38 B.T.A. 1270 (1938), affd., 112 F.2d 320 (7th Cir. 1940).) In the present appeal, the corporation ceased doing business and abandoned its sole facility in September of 1978. The corporation's balance sheet shows that it was without assets at this time. This abandonment constitutes the identifiable event which establishes the loss. (See Mark D. Eagleton, 35 B.T.A. 551 (1937).) It was in 1978 that appellants became aware there was no reasonable possibility that they would realize anything on their shares. We conclude, therefore, that appellants have not established that their securities became worthless in 1979.

Respondent initially imposed a penalty for failure to furnish information: however, upon additional review respondent concedes that appellants substantially complied with its requests for information and that the penalty was improperly imposed.

For the reasons stated above, we will sustain respondent's proposed assessment except for the failure to furnish information penalty.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Daniel, Jr., and Donna Bayles against a proposed assessment of **additional** personal income tax and penalty in the total amount of **\$6,341.51** for the year 1979, be and the same is hereby modified to reflect the Franchise Tax Board's concession regarding the penalty. In all other respects the action of the Franchise Tax Board is sustained.

Done at Sacramento, California, this 28th day of February, 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr.. Bennett and Mr. Harvey* present.

Richard Nevins, Chairman
- Ernest J. Dronenburg, Jr., Member
- Conway H. Collis, Member
William M. Bennett, Member
- - I _____, Member

*For Kenneth Cory, per Government Code section 7.9